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SUBJECT: VIETNAM'S NEW BIODIVERSITY LAW: A GOOD IDEA, BUT TOO FEW
DETAILS

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¶1. (SBU) Summary: On July 1, 2009, the Government of Vietnam (GVN) announced the implementation of its new Biodiversity Law, which had been ratified by the National Assembly in November 2008. The Vietnamese biodiversity law is the first of its kind in Southeast Asia. While biodiversity advocates praise the GVN intent to raise awareness and protect Vietnam's threatened biodiversity, few are confident that the GVN can successfully enforce the law. Critics note potential jurisdictional conflicts between ministries and a general lack of capacity within the GVN. To flesh out the provisions of the law, GVN officials expect to draft fifteen implementing regulations by the end of 2014, although none have yet been issued. These regulatory decrees will be critical in defining the ultimate content and specificity of the Biodiversity Law. The law also presents additional concerns, both for its allowance of commercial breeding, captivity, and potential exploitation of endangered animals, and for its lack of clarity regarding access to genetic materials. End Summary.

A NEW BIODIVERSITY LAW FOR VIETNAM

¶2. (U) Vietnam's new Biodiversity Law became effective on July 1, 2009. The GVN mandated the Ministry of Natural Resources and Environment (MONRE) to develop the law in 2003, in line with Vietnam's status as a signatory to the Convention on Biological Diversity and pursuant to the GVN poverty reduction strategy, which emphasized strategies to support poor communities living near protected areas. MONRE began drafting the law in early 2006, with input from several non-governmental and international organizations. In November 2008, the National Assembly ratified the law, which became effective July 1, 2009. Vietnam is the first country in Southeast Asia to implement such a law, joining India as the only other country in Asia to do so.

¶3. (U) The drafters envisioned the Biodiversity Law as a means of curbing threats to Vietnam's rich biodiversity, which has been declining in recent years. According to the Red Data Book, a list of rare and endangered species native to Vietnam, the number of endangered species in Vietnam has increased considerably in the past decade. This biodiversity loss is primarily attributed to over-exploitation of forests, shifting agricultural cultivation, water pollution and degradation of coastal areas. If successfully implemented, the Biodiversity Law would create a national standard for protected area and ecosystem management. It would also mandate a more systematic process for biodiversity conservation, and would provide incentives for poor local communities to conserve natural

resources. MONRE estimates that full implementation of the law will require approximately 600 billion Vietnamese Dong (approximately USD33 million) per year.

14. (SBU) On July 20 and July 21, 2009, EmbOffs met with GVN officials at the Institute of Strategy and Policy on Natural Resources and Environment (ISPONRE) and the Biodiversity Conservation Agency, both within MONRE and both of which played important roles in the drafting and planning of the new law. The GVN sought a single law to serve as a high-level legal document to govern all biodiversity-related issues. Representatives from both agencies asserted that international experts and organizations provided input and assistance to the GVN as it developed the law. However, an ISPONRE official noted that government drafters had dramatically simplified the law during the final days of the drafting process to provide only a framework for biodiversity protection. Individuals at MONRE and the National Assembly decided not to include in the legislation much of the specificity provided by expert consultation as they felt that the GVN implementing agencies did not possess adequate understanding of the subject matter. Per ISPONRE, the GVN will draft approximately fifteen decrees by 2014 to provide necessary detail and appropriate sanctions for formal implementation of the law. No decrees have yet been issued, though several are presently being drafted. As the final version of the Biodiversity Law is so vague, the implementing decrees will be particularly important in defining the scope and enforcement of the law.

A GOOD IDEA, BUT NOT ENOUGH

15. (SBU) Despite appreciation for GVN efforts to raise the national profile of biodiversity, non-GVN environmental experts, whose input was solicited during drafting, criticized the final Biodiversity Law. The International Union for Conservation of Nature (IUCN),

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World Wildlife Fund (WWF) and UNDP all stated that the final law was too simplistic and failed to incorporate their input. Of particular concern was the lack of detail regarding biodiversity corridors and pro-poor principles, both of which had been initial drivers in the creation of the new law and which were perceived as critical to environmental organizations. Jake Brunner, Vietnam Country Coordinator at IUCN, noted that "it is hard to know if this law is moving things forward [with respect to biodiversity], or pushing them backward". UNPD's Dao Xuan Lai noted that his organization has withdrawn support for the drafting of implementing decrees. "It is simply not worth our time," he said. Lai also noted that the Biodiversity Law changed considerably in the final days prior to implementation, becoming too simplistic and vague. The GVN has yet to solicit input from non-governmental organizations on the drafting of implementing regulations, despite a stated intention to do so.

16. (SBU) Individuals at IUCN, WWF and UNDP all expressed doubt that the MONRE will be able to enforce the new Biodiversity Law, noting a lack of human resources, experience and technical expertise. Individuals at the three organizations asserted that only the Ministry of Agriculture and Rural Development (MARD) had the capacity and expertise necessary to implement the Biodiversity Law. While MARD previously held jurisdiction over issues covered by the Biodiversity Law, much of this authority was transitioned to MONRE with the law's implementation. Apparently, the GVN assigned responsibility to MONRE as that agency is the GVN's signatory on international conventions pertaining to the environment and biodiversity. All highlighted the potential for conflict among MARD and MONRE, which presents a worrisome roadblock to successful implementation. Of additional concern to IUCN, in particular, is the notion that the new law does not definitively state whether and when it will supersede existing legislation. Thus, conflict among laws and ministries may allow individuals to selectively follow the laws that they like and wait until something better comes along.

ADDITIONAL CONCERNS

17. While Vietnam's efforts to raise biodiversity as a national

issue represent an attempt to protect vital natural resources, the Biodiversity Law presents some additional concerns. Most of Vietnam's biodiversity exists in less developed and poverty-stricken areas of the country, particularly around national parks, such as Cat Tien in the south and Ba Be in the north. As many of the pro-poor principles initially envisioned for the law were not ultimately incorporated, there is nothing to improve the living standards of those living near protected areas and nothing to remove the incentive to illegally exploit animals and plants from those areas. The Biodiversity Law also allows for commercial breeding and captivity of endangered species, which may lead to overexploitation, particularly with Vietnam's history of poor management of breeding farms. Of particular worry is that the Biodiversity Law may further legitimize the tiger trade that is already problematic in Vietnam. Additionally, because the law lacks sufficient specificity, we do not yet know how the GVN will regulate access to valuable genetic resources and treat issues related to biotechnology, both of which may be governed by this law.

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